

DECISION

2 August 2018

The Supreme Court, composed of:

Jerzy Kuźniar (president)
Jolanta Frańczak
Halina Kiryło
Maciej Pacuda
Krzysztof Rączka (rapporteur, reasons)
Jolanta Strusińska-Żukowska (rapporteur)
Małgorzata Wrębiakowska-Marzec

ruling on the appeal of D. Ś. against the decision of the Polish Social Insurance Institution (*Zakład Ubezpieczeń Społecznych*) in J. on insurance duty, sitting in closed session of the Labour Law and Social Security Chamber on 2 August 2018 – as a result of the legal issue referred by the decision of the Labour Law and Social Security Chamber of the Supreme Court of 18 July 2018, Ref. No. III UZ 10/18:

is there a “denial to hear the case on its merits”, within the meaning of Article 386(4) in conjunction with Article 477(14a) of the Code of Civil Procedure, if a case involving subjection to Polish social security is pending and the decision issued by the foreign pensions office, which determines no insurance duty in this Member State, is repealed?

I. refers, under Article 267 TFEU, the following questions to the Court of Justice of the European Union for preliminary ruling:

1) Do the second subparagraph of Article 19(1) in conjunction with the third subparagraph of Article 4(3), and Article 2 TEU, Article 267(3) TFEU, and Article 47 of the Charter must be interpreted as meaning that

the breach of the principle of the irremovability of judges, which is the key element of the principle of effective judicial protection and the principle of the rule of law, occurs any time the national legislature lowers the retirement age of judges of the court adjudicating at last instance (e.g. from 70 to 65) and applies the new retirement age to judges remaining in active service, while not leaving to them the decision to take advantage of the lower retirement age?

- 2) Do the second subparagraph of Article 19(1) in conjunction with the third subparagraph of Article 4(3), and Article 2 TEU, Article 267(3) TFEU, and Article 47 of the Charter must be interpreted as meaning that
- the breach of the principle of the rule of law and the standard of impartiality required to guarantee effective judicial protection occur when the national legislature, in breach of the principle of the irremovability of judges, lowers the retirement age of judges of the court adjudicating at last instance from 70 to 65 and makes the prolongation of their service at the discretion of the executive branch?
- 3) Does Article 2 in conjunction with Article 6(1) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation must be interpreted as meaning that
- lowering the retirement age of judges of the court adjudicating at last instance and making the prolongation of their service at the discretion of the executive branch constitutes discrimination on grounds of age?
- 4) Do Article 2, Article 9 and Article 11 of Council Directive 2000/78/EC in conjunction with Article 21 and Article 47 of the Charter must be interpreted as meaning that
- in case of discrimination on grounds of age against judges of the court adjudicating at last instance, which consists of lowering their retirement age from 70 to 65, this court – hearing any case in which the judge, subject to such discrimination and not decided to take advantage of the lower retirement age, is included in its composition – when ruling on preliminary issue regarding its composition, is obliged to refrain from applying provisions of national law which are contrary to Directive 2000/78/EC and Article 21 of the Charter and proceed to hear the case including the judge in question, if it is the only effective means to guarantee effective judicial protection of this judge's rights conferred by EU law?
- 5) Do the second subparagraph of Article 19(1) in conjunction with the third subparagraph of Article 4(3), and Article 2 TEU, Article 267 TFEU, and Article 47 of the Charter must be interpreted as meaning that
- the rule of law must be treated as such a fundamental principle of the European Union that in case of doubt about compliance of national law, which lowers the retirement age of judges (as described in questions 1–2 above), with this principle and the principle of effective judicial protection arising therefrom – concerning independence and impartiality of courts and judges therein – the court must have the right to grant (on its

own motion) interim relief to suspend the application of such provisions, infringing the principle of the irremovability of judges, regarding all judges to which they apply?

- II. requests, under Article 105(1) of the Rules of Procedure of the Court of Justice, the application of the expedited procedure;
- III. suspends, under Article 732 in conjunction with Article 755(1) of the Code of Civil Procedure in conjunction with Article 267(3) TFEU and Article 4(3) TEU, the application of Article 111(1), Article 111(1a), Article 37 and Article 39 of the Act on the Supreme Court (Journal of Laws of 2018, item 5, as amended) – until the Court of Justice of the European Union issues the preliminary ruling regarding questions 1–5 above;
- IV. adjourns the sitting.